



TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commenced at 1:01 p.m.)

2 THE CLERK: All rise.

3 THE COURT: Good afternoon, everyone. Thank you.

4 Please be seated.

5 MR. LANDIS: Good afternoon, Your Honor --

6 THE COURT: Mr. Landis?

7 MR. LANDIS: -- and may I please the Court? Adam  
8 Landis from Landis Rath & Cobb, counsel to FTX Trading, Ltd.  
9 and the associated debtors.

10 Your Honor, we filed an amended agenda in the case  
11 today, noting that Items 1 through 5 are adjourned; Items 6  
12 through 8, 11, 12, and 13 have been resolved with orders  
13 entered, for which we thank Your Honor for taking care of  
14 that. We only have three matters going forward: Number 9,  
15 with respect to the debtors' request for an extension of  
16 their exclusive periods to file and solicit a plan of  
17 reorganization; Number 10, the stay relief motion; and  
18 Number 14, which is a status conference, with respect to  
19 Emergent.

20 Before we head into the agenda proper,  
21 Mr. Dietderich would like to address the Court with an update  
22 as to matters since we've last appeared at an omnibus  
23 hearing.

24 THE COURT: Okay. Thank you.

25 Mr. Dietderich?

1                   MR. DIETDERICH: Thank you. Good afternoon, Your  
2 Honor. Andy Dietderich for the debtors; with me is my  
3 partner Brian Glueckstein.

4                   I think we have a presentation. Does it -- do I  
5 press it forward? That's not it.

6                   (Laughter)

7                   THE COURT: Remove that person from Zoom, please.  
8 Thank you.

9                   Can we bring that up for everybody in the  
10 courtroom?

11                   (Pause)

12                   MR. DIETDERICH: There is it. Good. So, thank  
13 you.

14                   Your Honor, it's been three months since we were  
15 before you at an omnibus hearing. We'd like to thank Your  
16 Honor for the efficient manner in which the cases have been  
17 conducted so far. The Court has entered more than 38 orders  
18 on certification of counsel, including 30 orders that  
19 reflected negotiated solutions with stakeholders. As a  
20 result, the debtors have been able to focus almost entirely  
21 on the business of the case, rather than court appearances.

22                   The first months of the case have been  
23 extraordinarily busy and productive. There's an overwhelming  
24 number of ongoing workstreams and novel issues in every  
25 discipline. Today, the situation has been stabilized and the

1 dumpster fire is out, and as I will explain in a moment, we  
2 anticipate filing a plan of reorganization in July.

3 I would like to spend some time on a case update  
4 for the Court. First, and perhaps most important, our assets  
5 available for stakeholder recovery. Our estate consists of  
6 many investments, businesses, and causes of action that have  
7 not yet been monetized. Valuing these now is impossible;  
8 however, we are tracking distributable assets: Cash, Class  
9 A, or Category A cryptocurrency, which we defined in previous  
10 submissions, and securities.

11 Here's a chart of these assets at petition date  
12 value, including cash receivables from the settlements and  
13 transactions recently approved by the Court. We now stand at  
14 \$6.2 billion, an increase of \$800 million from my update to  
15 the Court in January. This increase in value is more  
16 significant if we take into account current asset pricing.

17 On this next slide, at current prices, our  
18 distributable assets have increased to \$7.3 billion, a \$1.9  
19 billion increase from my January briefing. What goes up can  
20 go down. Prices will fluctuate during these cases.

21 As we will discuss in a moment, one of the  
22 important tasks of the debtors is being a good and prudent  
23 custodian of \$7.3 billion of asset value. We will be  
24 increasing distributable assets, hopefully dramatically, as  
25 the case progresses, but it's also important for us not to

1 lose what we have now.

2 Next, Your Honor, I'd like to review some  
3 significant events by subject matter. The first is our  
4 investigative work. In addition to everything else, the  
5 debtors are conducting an extraordinarily complicated  
6 forensic investigation, in coordination with multiple law  
7 enforcement agencies in the United States and around the  
8 world. Early on in this case, the Board of Directors decided  
9 it was in the interests of the estate to expend the resources  
10 necessary to create a centralized collection of information  
11 under the debtors' control and to make this information  
12 available to law enforcement agencies in a transparent and  
13 reliable manner. The debtors believe that this cooperation  
14 has, and will continue to benefit the estates economically,  
15 especially as we approach the formation of a plan and the  
16 coordination of the distribution of estate property with a  
17 distribution of property subject to criminal forfeiture.  
18 Government cooperation is in our financial interests.

19 The investment has been substantial. Over 1.3  
20 terabytes of data has been collected and compiled. Much of  
21 the information has been provided only to government  
22 authorities, sometimes directly and sometimes in summary  
23 presentations. The debtor is limited in what it can say  
24 publicly and provide to certain parties in interest because  
25 of the pending government investigations; however, the

1 debtors were able to publish earlier this week, the first  
2 interim report of Mr. Ray, the independent director; a report  
3 that focuses on control failures at the FTX Group prior to  
4 filing.

5 The gist of this report is clear: Mr. Bankman-  
6 Fried repeatedly, pervasively, and often persuasively, lied  
7 to stakeholders and the customers and creditors in order to  
8 maintain the digital con game. The FTX exchanges appeared to  
9 the user as legitimate, in fact, superficially, they appeared  
10 to process trades and information more quickly and  
11 conveniently than competitors. The app worked beautifully,  
12 but in truth, it was a facade, a digital Potemkin village, or  
13 perhaps more apt, a video game. Behind the user interface,  
14 there was no correspondingly sophisticated reality, no  
15 equivalent process for segregating assets or reconciling  
16 trades, no reliable relationship between the positions  
17 reflected in the online game and the underlying positions  
18 held in the real world.

19 The debtors are working on a second report that  
20 will focus on the violation of basic principles of asset  
21 segregation. The debtors will endeavor to make these reports  
22 available on a rolling basis and hope they will facilitate  
23 the common understanding necessary for productive plan  
24 discussions.

25 Other developments include the guilty pleas of

1 Mr. Singh, joining Mr. Wang Ms. Ellison. Those who have pled  
2 guilty also have agreed to provide assistance to the  
3 government and Mr. Wang, in particular, has provided material  
4 assistance to the debtors, as well, helping us locate  
5 additional assets. And we've seen additional charges against  
6 Sam Bankman-Fried.

7 We also appreciate the U.S. criminal authorities  
8 working in parallel with us to secure assets. This includes  
9 approximately 100 million in cash in the name of FTX Digital  
10 Markets, as well as the often-discussed HOOD stock.

11 From the debtors' perspective, Your Honor, we see  
12 no tension between the debtors and the U.S. Attorney as to  
13 whether particular assets are recovered by the U.S. Attorney  
14 or by the debtors. In this case, we believe victims entitled  
15 to restitution and creditors entitled to a distribution in  
16 Chapter 11 are functionally equivalent. We will continue to  
17 work with the U.S. Attorney on this basis.

18 Operationally, we reconciled customer balances  
19 across an incredible 10 million accounts. We have a  
20 considerable cost and expense fortified, the AWS security  
21 environment. We've retained a core team of continuing  
22 employees and Your Honor has approved a KERP. We've  
23 rationalized our use of office space and our footprint and,  
24 importantly, we have returned cryptocurrency to customers in  
25 Japan by opening for withdrawals.

1                   Japan has a cryptocurrency regulatory environment  
2 that was responsive to the Mt. Gox insolvency.

3 Cryptocurrency generally must be kept in segregated cold  
4 storage and customers have a clear ownership right in the  
5 cryptocurrency under Japanese law. As a result, Japan is the  
6 one place in the world where cryptocurrency was actually kept  
7 segregated by FTX and the segregation was never broken.

8                   The debtors also have been working very hard to  
9 open withdrawals of segregated cash in Cyprus, where there  
10 are different, but also effective, customer protections with  
11 respect to cash deposits. These jurisdictions, however, are  
12 notable exceptions. Everywhere else the situation, as to  
13 customer rights and asset segregation, is unclear.

14                   Accounting and tax are things normally taken for  
15 granted by lawyers, but the debtors, now, are not reviewing  
16 balance sheets because there are no reliable balance sheets;  
17 instead, the debtors have been building balance sheets from  
18 primary source material. That material includes banking  
19 records, AWS, the included environment, QuickBooks, and a  
20 category of unstructured data, which is accountant speak for  
21 emails, text, and even chatroom entries. The initial fruits  
22 of this effort were the reports the debtors made public on  
23 customer shortfalls on the exchanges and the schedules and  
24 statements filed only last month.

25                   Efforts now underway include recreation of

1 intersilo and interdebtor transactions, led by our financial  
2 advisor Alvarez & Marsal; the development of historical  
3 financial statements, led by a team of forensic accountants  
4 at AlixPartners, in efforts to put the debtors in a position  
5 to file accurate tax returns, led by Ernst & Young.

6                   As I mentioned previously, one of the important  
7 tasks of the debtors is managing \$7.3 billion in effectively  
8 liquid assets. Over 75 percent of our cash is in 345(a)  
9 compliant accounts, which in the current banking environment,  
10 the protections of 345 seem especially prudent. About  
11 \$500 million of our cash is held outside of 345(a) compliant  
12 accounts, pursuant to our cash management order. We continue  
13 to examine whether or not we can move more of that cash  
14 into 345(a) accounts.

15                   Our cryptocurrency, the debtors hold 1.6 billion  
16 in cryptocurrency at current market values in cold storage,  
17 controlled by the debtors. The remaining Category A  
18 cryptocurrency is staked or on third-party exchanges and we  
19 may migrate that into cold storage over time, but it's  
20 impractical to do it at the current moment. The Board is  
21 monitoring all of these exposures, taking expert advice on  
22 cryptocurrency custody and security risks and discussing the  
23 risks involved and potential alternatives with the Committee  
24 and other stakeholders.

25                   These assets will continue to grow. Avoidance

1 actions and other outbound litigation will be an important  
2 source of recovery for creditors. Actions so far include our  
3 \$460 million settlement with Modulo, a 53 million cash  
4 settlement with Dell Tech, avoidance actions against three  
5 other Chapter 11 debtors. These include a \$445 million  
6 administrative preference claim into the Voyager bankruptcy  
7 and substantial claims against BlockFi and Genesis. These  
8 early avoidance actions are the tips of the icebergs. We  
9 have reviewed substantially all of the historical off-chain  
10 transactions by the debtors at this point, all the  
11 transactions that we believe may be avoidable. And the facts  
12 of these suggest compelling causes of action relating to  
13 several billion dollars of lost value. We also are advancing  
14 our work to review preferential transactions on the exchanges  
15 themselves. Finally, in addition to -- oh, the Grayscale,  
16 which we've commenced, and then, finally, turnover actions.

17 One of the most difficult issues that we faced is  
18 that we continue to discover assets of the debtors that were  
19 held by nominee owners on behalf of Alameda and FTX. One  
20 example is the Court's recent authorization of the turnover  
21 of an account at OKCoin, including over \$150 million of  
22 cryptocurrency held in the name of an individual, but  
23 belonging to Alameda. We'd like to thank the dozens of  
24 exchanges and other parties that have been cooperating with  
25 us in these activities.

1                   We also have many valuable assets to sell. The  
2 Court has approved the \$96 million sale of our position in  
3 Mysten Labs and the \$45 million sale of a position in certain  
4 Sequoia funds.

5                   We've received -- we have a, as I said before, a  
6 very substantial set of venture book investments. We have  
7 now reviewed substantially all of those investments and are  
8 trying to decide the path forward on a venture investment-by-  
9 venture investment basis.

10                  The *de minimis* asset sale procedures that have  
11 been approved by the Court, we've used for \$5 million of  
12 proceeds so far, although, there are dozens of transactions  
13 under discussion.

14                  And then, finally, we have ongoing sale processes  
15 announced that have yet to reach their conclusion. These  
16 include the transactions that we've noticed -- that we've  
17 mentioned before, as well as token investments and other  
18 stray investments of various sorts.

19                  So, where is all this going? We stand here today  
20 in the middle of April. In the second quarter, the debtors  
21 complete the 90-day review period we set for internal  
22 discussions concerning the continued operation of the  
23 exchanges; discussions, in which the Committee has been an  
24 active participant. We'll be discussing next steps and  
25 alternatives for the potential restart or recapitalization of

1 the exchange, conventional ideas and novel ideas with the  
2 Committee and other stakeholders over the coming weeks.

3 We also are going to start plan discussions later  
4 this quarter. Our goal is to file with the Court a  
5 preliminary plan of reorganization in July. We would like to  
6 set a bar date promptly. Our current expectation is that we  
7 will set a non-customer bar date at the end of July. Our  
8 customer bar date requires the creation of a bespoke claims  
9 portal and raises a number of complicated issues. We're  
10 preparing the portal in consultation, again, with the  
11 Committee, and want to have an operating demo to run through  
12 prior to launch, so we anticipate the customer bar date, like  
13 the government bar date, will be at the end of September.  
14 That's a bifurcated bar date process, but it allows us at  
15 least to get the information that we're going to yield -- the  
16 non-customer bar date would yield. This is, in part, because  
17 the level of information we have about non-customer claims  
18 is, let's just say, will be benefited by the bar date process  
19 as we start to decide. We have a pretty good idea now of the  
20 nature of customer claims against the estate, but the nature  
21 of non-customer claims, we have a lot less certainty and so  
22 we bifurcated the bar date so we could approach the plan  
23 process having a better sense of how significant are non-  
24 customer claims, in particular, loan counterparty and other  
25 claims into Alameda.

1                   We're aiming to have a disclosure statement filed  
2 in the fourth quarter, a disclosure statement hearing in the  
3 first quarter of 2024, a plan solicitation motion that  
4 bridges the quarters, and finally, plan confirmation in the  
5 second quarter of 2024. Now, these are, of course, an  
6 aspirational calendar, but we believe it's a sensible  
7 calendar and we believe the filing of a plan early is  
8 important, given the nature of the case. So far in the case,  
9 we have avoided serious litigation with economic parties.

10                  As we've considered internally at great length,  
11 the central legal issues in the cases, such as the nature of  
12 customer entitlements, the distinction or lack of distinction  
13 between legal entities, they all raise significant equitable,  
14 as well as legal questions. The same is true for stakeholder  
15 assertions of constructive trust; a phrase that we've heard,  
16 Your Honor, from dozens of different stakeholders all across  
17 the capital structure, seeking to elevate their own claim.

18                  The debtors believe that discussion, settlement,  
19 and if necessary, litigation of all of these issues will be  
20 easier if we first table a plan of reorganization that shows  
21 all stakeholder and potential litigants the big picture of  
22 how they and others will be treated. We need to show  
23 stakeholders that plan first and resolve disputes about the  
24 plan second, given our facts. Throughout this process,  
25 asset-recovery efforts will continue.

1                   That's all I have, Your Honor, but we wanted to  
2 make sure that we, at least, were able to tell Your Honor and  
3 stakeholders not just something about the history of what's  
4 accomplished, but a roadmap going forward.

5                   So absent questions from Your Honor, I'll turn to  
6 today's agenda.

7                   THE COURT: Let me just ask a question about the  
8 exchange restart. What does that entail? How will it work?  
9 Do customers, will they be able to withdraw funds or their  
10 coin that's being held on the exchange? What's the  
11 anticipation of how that's going to be playing out?

12                  MR. DIETDERICH: The short answer is we don't know  
13 yet. So, the -- there's two exchanges, of course. There's  
14 actually more than two exchanges. There's two primary  
15 exchanges: dot com and the U.S. Exchange. The options being  
16 considered include a restart of the exchange from an  
17 operational and a functional perspective. It is likely that  
18 requires the raising of significant capital.

19                  There's a question posed whether the estate's  
20 capital should be used for that or whether it should be  
21 third-party capital. There were some people that look at it  
22 as an M&A transaction: Can we dispose of the assets,  
23 including the going-concern value of the estate, for proceeds  
24 to the estate and distribute those proceeds? There were  
25 possibilities that customers could have an option to take a

1 part of their proceeds in, you know, that they would  
2 otherwise receive in cash from the estate, and receive some  
3 kind of interest in the exchange going forward. There are as  
4 many opinions on this, I think, as there are professionals  
5 involved in the case, and that's a lot. So it's a very --  
6 you know, I don't think we have an answer at this time.

7                   What we have committed to do, as we spent the last  
8 about 90 days, that 90-day period we gave to kind of the  
9 initial consideration of this expiring, and we're going to  
10 sit down with the Committee and other stakeholders and think  
11 about it.

12                   There's also a sequence and a timing question.  
13 So, there are some to believe that if there's anything to be  
14 done with the exchange, it should be done quicker -- as  
15 quickly as possible, which might imply some kind of 363 or  
16 other architecture. And others, you know, that believe,  
17 perhaps, the exchange should be coupled with other assets, as  
18 opposed to just being, you know, the exchange itself.

19                   So a long-winded way to say, Your Honor, that all  
20 options are on the table, but we don't have any particular  
21 path forward at this time.

22                   THE COURT: Does there need to be a resolution of  
23 the -- I know there's litigation pending about whether coin  
24 that's being held in the exchange is property of the estate  
25 or is it customers' property? Does that need to be resolved

1 before we can reopen the exchange?

2 MR. DIETDERICH: No, I don't think so. I think  
3 that it depends on the nature of the structure of that  
4 transaction, okay, and that's, again, one of the things that  
5 we're thinking about is, if we want to do something with the  
6 exchange in advance of what I think is already an aggressive  
7 timeline for the plan, as opposed to waiting to resolve, when  
8 we resolve the plan, then I think we're all going to have to  
9 get together and come up with a way to monetize, if you will,  
10 the estate's investment -- the value the estate has in the  
11 exchange in a way that is without prejudice to the plan  
12 issues, but there's obviously the relationship.

13 THE COURT: All right. Thank you.

14 MR. DIETDERICH: So, on the agenda today, Your  
15 Honor, we only have three items, as I think Mr. Landis  
16 mentioned. The first item, Agenda 9, is exclusivity. Then,  
17 we have Mr. Bankman-Fried's motion for relief from the  
18 automatic stay. And then a status conference discussion in  
19 the Emergent case is Agenda Item 14.

20 So, Your Honor, I'll turn to the exclusivity  
21 motion, filed at 846. The debtors' request to extend the  
22 exclusivity period by six months is unopposed. The Committee  
23 did file a statement, to which we responded, and absent  
24 questions from the Court, we'd ask that the motion be  
25 entered.

1                   THE COURT: Okay. I don't have any questions.

2                   Did the Committee want to be heard on this?

3                   MR. HANSEN: We would like to, Your Honor, yes.

4 Thank you.

5                   Your Honor, Kris Hansen with Paul Hastings on  
6 behalf of the Official Committee. I'll try to make this  
7 brief, Your Honor.

8                   The Committee's stated that was filed in  
9 connection with exclusivity was accurate and not misleading.  
10 It was direct and aimed at helping the Court to try to  
11 understand the Committee's frustrations to date. It was also  
12 aimed at holding the debtors to their newly minted timeline  
13 and their commitment to be more transparent with Committee  
14 members than they have been to date.

15                   Unfortunately, the debtors filed a surprisingly  
16 insecure response that the Committee believes is disingenuous  
17 in some ways, and we have no choice but to correct the  
18 record. As we noted in our statement, the primary issue the  
19 Committee has had with the debtors is their lack of trust and  
20 engagement at the Committee member level. The debtors' own  
21 exhibit highlights their concern. Of the 1,636 documents  
22 provided to the Committee, as listed on the exhibit, only 21  
23 of them, 1.3 percent of the total, were seen by the members  
24 of the Committee as designated as "nonprofessional-eyes  
25 only." Of those 21, 2 were the so-called "UCC reports" that

1 the debtors referred to a few times in their response.

2 To be clear, those are not really UCC reports.

3 They were debtor documents that were shared with the members  
4 of the Committee on the same day that they were released to  
5 the public and accompanied by two of the three meetings that  
6 were listed on the debtors' exhibit, which were walk-throughs  
7 of the documents hours before they were publicly released on  
8 January 17th and March 2nd.

9 Obviously, if the Committee members had been given  
10 advance access to the decks, they could have asked more  
11 intelligent questions, made the calls more productive, and  
12 provided valuable input on those presentations. But they  
13 were not provided with that opportunity, despite the requests  
14 of the Committee professionals to do so.

15 The only other meeting of the three that are  
16 referenced in the deck happened on March 30th after the  
17 Committee delivered the debtors a draft reservation of rights  
18 on exclusivity that was far more strident than the one that  
19 it ultimately filed. At the time of the delivery of the  
20 draft document, the Committee requested a case timeline and a  
21 meeting with Mr. Ray.

22 The debtors did not disclose a case timeline to  
23 the Committee professionals at that point, but they did,  
24 however, provide a high-level timeline when the call with  
25 Mr. Ray took place later. The debtors' reply would have the

1 Court believe that both, this detailed timeline and the call  
2 with Mr. Ray, were products of the debtors' own volition, but  
3 they simply were not. They were prompted by the Committee.

4 And we are pleased with Mr. Dietderich's  
5 disclosure of the timeline today. That's the kind of  
6 information that we believe the Court deserves and that we  
7 believe the public deserves and that we believe all the  
8 creditors and the customers deserve, as well.

9 However, as an example of how the Committee  
10 members have been helpful to the debtors, which is not  
11 referenced in any of the pleadings, is a situation that  
12 unfolded over the weekend after the Silicon Valley Bank  
13 failure. That weekend, Mr. Ray reached out to the Committee  
14 professionals and the Committee members and a productive  
15 dialogue occurred where the expertise of the Committee  
16 members was helpful to the debtors in navigating the unique  
17 situation that confronted them, with respect to certain  
18 stablecoins. It was, and remains the Committee's hope that  
19 similar interactive "roll up the sleeves and get to work"  
20 meetings like those will continue.

21 The Committee also takes issue with what the  
22 debtors seem to be trying to convey in their reply as to the  
23 Committee's role, which is simply one of administrative  
24 oversight. As the Court knows, that is definitively not what  
25 a Creditors Committee is limited to. Section 1103 of the

1 Code provides for the nonexclusive and expansive list of  
2 topics that are appropriate for a Committee, including the  
3 investigation of the acts, conduct, assets, liabilities, and  
4 financial condition of the debtors, the operation of the  
5 debtors' business, and any other matter relevant to the case  
6 or the formulation of a plan in order to carry out its role  
7 as a fiduciary for all creditors in a Chapter 11 case.  
8 Similarly, Section 1109 of the Code permits Committees to be  
9 heard on any issue in the case.

10                   In the end, Your Honor, the Committee believes  
11 that its members have real world, digital asset, and  
12 cryptocurrency trading knowledge and expertise that can prove  
13 helpful to the debtors in addressing the many issues in these  
14 cases and to expedite their conclusion. The Committee looks  
15 forward to the forthcoming plan negotiations and the hard  
16 work to be done on the many other tasks that are necessary to  
17 achieve its goal.

18                   One note on the restart of the exchange, Your  
19 Honor. The Committee does have a subcommittee that is  
20 focused exclusively on the restart. It incorporates many of  
21 the concepts that Mr. Dietderich discussed and yesterday we  
22 were happy to deliver to the debtors a term sheet on that  
23 basis and we look forward to working with them going forward.

24                   THE COURT: Okay. Thank you.

25                   MR. HANSEN: Thank you, Your Honor.

1 THE COURT: Mr. Dietderich, any response?

2 Obviously, I expect the debtors and the Committee  
3 to cooperate fully and there be a free-flow of information  
4 between the two. I did not appoint an examiner because we  
5 have an independent Board of Directors and independent CEO  
6 running the debtors, so I expect that there will be an open  
7 and free-flow of information.

8 MR. DIETDERICH: We believe we have and we will  
9 continue to try our best on that front.

10 The U.S. Trustee, Your Honor, made, I think, a  
11 wise choice: appoint a single Committee in this case. And  
12 we are, despite our growing asset value, far away from an  
13 equity distribution; meaning, that there should be alignment  
14 at a fundamental level between the debtors and the Committee.  
15 And, certainly, in our relationship with the professionals,  
16 we have had what I think is really an open, transparent from  
17 our end, very productive working relationship.

18                   But we take the feedback into account that we  
19 should do a better job of -- maybe, perhaps now that the case  
20 is established and some of the security and other  
21 informational worries are fading in importance, we can  
22 continue to push in involving Committee members directly, not  
23 just the professionals, in some of the decisions that we're  
24 making.

25 THE COURT: Okay. Thank you.

1                   Does anyone else wish to be heard on the  
2 exclusivity motion?

3                   (No verbal response)

4                   THE COURT: All right. I'm satisfied that the  
5 requested relief is appropriate and I will enter the order.

6                   Has a form of order been uploaded?

7                   MR. DIETDERICH: Your Honor, I believe it has. To  
8 the extent it has not, I will get it uploaded.

9                   THE COURT: Okay. Thank you.

10                  MR. DIETDERICH: Thank you, Your Honor.

11                  So I believe the next motion, Your Honor, is from  
12 Mr. Bankman-Fried's counsel --

13                  THE COURT: Yes.

14                  MR. DIETDERICH: -- so, I will cede the podium.

15                  THE COURT: Okay.

16                  MR. DONILON: Good afternoon, Your Honor. Gregory  
17 Donilon, Montgomery McCracken, on behalf of Samuel Bankman-  
18 Fried. I'm joined by my colleague Edward Schnitzer. He has  
19 been admitted *pro hac vice* in this case and he will be  
20 handling Item 10 on the agenda.

21                  THE COURT: Thank you.

22                  MR. DONILON: Thank you, Your Honor.

23                  THE COURT: Mr. Schnitzer?

24                  MR. SCHNITZER: Good afternoon, Your Honor. For  
25 the record, Edward Schnitzer from Montgomery McCracken

1 Walker & Rhoads, on behalf of Samuel Bankman-Fried.

2 We're here today on Mr. Bankman-Fried's motion for  
3 relief from the automatic stay to the extent applicable to  
4 permit insurers to advance and/or reimburse defense costs and  
5 fees under directors and officers insurance policies. The  
6 relief sought is quite customary, as we highlight in  
7 paragraph 30 of our motion, including orders entered by this  
8 Court in other cases.

9 To be clear, Your Honor, Mr. Bankman-Fried is only  
10 seeking an order permitting the insurers to advance or  
11 reimburse costs. He's not seeking an order determining  
12 coverage or an order awarding him \$10 million.

13 Specifically, Your Honor, paragraph 2 of our  
14 proposed order states:

15 The automatic stay imposed under Section 362(a) of  
16 the Bankruptcy Code does not apply, or to the extent it does  
17 apply, the automatic stay is lifted and modified solely to  
18 the extent necessary to permit and authorize Relm & Beazley  
19 to evaluate coverage and to make payments under, and in  
20 accordance with the terms of the D&O policies to or for the  
21 benefit of Mr. Bankman-Fried for the reimbursement and  
22 payment of any covered defense costs incurred in connection  
23 with the pending claims.

24 Your Honor, also contrary to what some of the  
25 objecting parties have claimed, Mr. Bankman-Fried is also not

1 seeking an order to the exclusion of any other insured who  
2 might have coverage. Far from it. Mr. Bankman-Fried simply  
3 sought coverage, since he had no choice after the debtors  
4 refused to indemnify him and refused to stipulate to stay  
5 relief. It was not his right or place to seek coverage or  
6 stay relief on behalf of any other party, other than himself.  
7 They are certainly free to do so as long as they comply with  
8 the Bankruptcy Code and the policies.

9 Your Honor, why does Mr. Bankman-Fried need this  
10 coverage? Because he has been named as a defendant or is  
11 otherwise involved in criminal, regulatory, civil, and other  
12 actions and proceedings that have resulted in, and can be  
13 expected to continue to result in significant, unreimbursed  
14 legal fees and other expenses. We identified those actions  
15 and proceedings in paragraph 16 of our moving paper and I  
16 will not repeat them here.

17 Your Honor, Mr. Bankman-Fried is covered by  
18 insurance policies designed to protect against exactly this  
19 circumstance. The policies are structured to provide  
20 coverage for defense costs in these circumstances, so that  
21 individual insureds like Mr. Bankman-Fried can mount an  
22 effective defense.

23 There are two policies relative to this motion.  
24 The first is the Relm insurance policy, Relm Insurance  
25 private company management liability policy, which was

1 attached to the motion as Exhibit B, and the second policy is  
2 the excess claims made directors and officers liability  
3 insurance policy, which is attached to the motion as  
4 Exhibit C.

5 Your Honor, there are five important parts of  
6 those policies that I would like to highlight for the Court  
7 and which were highlighted in the opening paragraph of our  
8 reply papers. First, the policies contractually mandate  
9 reimbursement by the debtors of expenses incurred by an  
10 individual insured as the debtors agreed to indemnify all  
11 individual insured persons. Second, the policies require the  
12 insurers to advance defense costs if the debtors refuse, so  
13 that the insured can mount the defense. Third, the policies  
14 prioritize payment as to the individual insured, not the  
15 debtors, if, quote, "the loss due and owing by the insurer  
16 under a liability coverage part exceeds the then-remaining  
17 limit of liability applicable to such loss." Four, the  
18 policies provide that a bankruptcy of the company shall not  
19 relieve the insurer of its obligations under this policy.  
20 And five, the policies require the company, in this case, the  
21 debtors, to waive and release the automatic stay with respect  
22 to the policy or its proceeds, and agree not to oppose or  
23 object to any efforts by any insured to obtain relief from  
24 the stay.

25 Why are we here, Your Honor? We are here because

1 Mr. Bankman-Fried asked the debtors to indemnify him as they  
2 were required to do under the insurance policies, but the  
3 debtors refused to do so. After being denied this right,  
4 Mr. Bankman-Fried, through counsel, asked debtors' counsel to  
5 stipulate to relief from the stay, which is also customary in  
6 this court, as well as other courts, and, again, the debtors  
7 refused to do so. So, it was in light of that, that we had  
8 no choice but to file this motion.

9 Whether the Court concludes that the proceeds of  
10 the policies are property of the estate or -- sorry. Your  
11 Honor, whether this Court concludes that the proceeds of the  
12 policies are not property of the estate because coverage is  
13 likely to be exhausted by Side A claims or if this Court  
14 concludes that the proceeds of the policies are potentially  
15 property of the estate, stay relief should be granted so that  
16 the policies can be used for the purposes that they were  
17 obtained: to provide coverage to individual insured, like  
18 Mr. Bankman-Fried.

19 Your Honor, as the Eastern District of New York  
20 Bankruptcy Court explained in the First Central Financial  
21 case, quote:

22 "D&O policies are obtained for the protection of  
23 individual directors and officers . . . in essence and at its  
24 core, a D&O policy remains a safeguard of officer and  
25 director interests."

1                   Your Honor, let me address the elephant in the  
2 room. Yes, Mr. Bankman-Fried has been indicted and is a  
3 defendant in multiple lawsuits, but Mr. Bankman-Fried has not  
4 been convicted of a crime or found civilly liable, contrary  
5 to what the objecting parties may have stated in their  
6 papers. He is subject to an indictment and only that.

7                   As this Court is aware, an indictment is not a  
8 conviction; it's merely an accusation, no different than a  
9 complaint. Mr. Bankman-Fried, like any other person is, and  
10 must be presumed innocent, unless and until found guilty of  
11 any criminal wrong. He is like any other former director or  
12 officer of a company that seeks access to a D&O insurance  
13 policy to pay for legal fees. Coverage under those policies  
14 for those legal fees does not change simply because some  
15 people hope or believe that Mr. Bankman-Fried is guilty.

16                  I'd like to address the three responses that were  
17 filed, Your Honor. First, the Committee objection. As we  
18 noted in our reply, we submit that the Committee's objection  
19 should be rejected, as they seek relief on behalf of the  
20 debtor; relief that the debtor is contractually barred from  
21 seeking. It's something that the debtors recognized in their  
22 papers.

23                  THE COURT: Well, let me ask you about that first,  
24 because I question whether or not that provision is even  
25 enforceable in bankruptcy. Isn't it void as a public policy

1 issue? How can a debtor -- how can a company say,  
2 prepetition, We're going to agree that if we have property of  
3 the estate, we're going to agree to waive our right to seek a  
4 stay or we're going to waive our right to object to someone  
5 who wants to lift the stay to pursue those assets?

6 It seems to be counterintuitive to the whole  
7 purpose of the Bankruptcy Code.

8 MR. SCHNITZER: Understood, Your Honor.

9 It's like how I believe agreements to make a debt  
10 nondischargeable are not necessarily enforceable in a  
11 bankruptcy.

12 Your Honor, it's possible. I will admit, we did  
13 not look into it. The debtors, in their papers, agreed. It  
14 was perhaps was the only thing that they agreed with us on in  
15 their papers.

16 Your Honor, it may not be enforceable. We do not  
17 rely upon that. We rely upon reasons for why stay relief  
18 should be granted here.

19 But I did want to note the debtors, like I said,  
20 did apparently agree with it, so they, apparently, were  
21 comfortable with it and maybe it's because the policy is  
22 going forward post-petition, and so you could get into  
23 questions there. But, honestly, I don't know, and we're not  
24 relying upon that. We're not asking you to grant -- we're  
25 not asking you to strike all the opposition because of that

1 and grant our relief as effectively unopposed.

2 THE COURT: Okay. Well, let me ask you another  
3 fundamental question, then. It has been ruled -- the rule in  
4 this court, at least, and I've ruled the same way, that where  
5 a debtor is a co-insured under a policy, it is property of  
6 the debtor's estate and the debtor here is a co-insured under  
7 these policies, correct?

8 MR. SCHNITZER: Yes, correct, Your Honor.

9 THE COURT: So, they would be, under precedent in  
10 this Court, it is property of the debtors' estate, right?

11 MR. SCHNITZER: Your Honor, as we set forth in our  
12 paper, we believe because of the priority of payments, that  
13 Side A will come first. That there will not be anything  
14 left, likely, for the debtors. And we believe because of  
15 that, and there's ample case law to support it, that it's not  
16 property of the estate, but as we put in our papers, should  
17 this Court conclude otherwise, that is why we also sought  
18 relief from the stay, to the extent the proceeds of the  
19 policies are found to be property of the estate.

20 They do have a potential interest. We believe it  
21 is contingent and it is less than individual insureds, which  
22 includes Mr. Bankman-Fried, but does include other members.  
23 But, Your Honor, to the extent you conclude that because of  
24 that contingent interest it is property of the estate, that  
25 is why we also seek stay relief, Your Honor, as our

1 alternative ground.

2 THE COURT: Well, doesn't that also contradict  
3 your position that you're taking, that the priority of  
4 payments, you're saying Mr. Bankman-Fried is not seeking to  
5 deplete the \$10 million. He doesn't think -- apparently  
6 doesn't think he's going to deplete the \$10 million. So the  
7 priority of payment provision hasn't kicked in yet, right?

8 MR. SCHNITZER: Correct, it has not. What we  
9 are --

10 THE COURT: Which means anybody can file a claim,  
11 including the debtors.

12 MR. SCHNITZER: Correct. Anybody who is permitted  
13 to under the policies and under any Bankruptcy Code  
14 provisions that are applicable, is permitted to submit a  
15 claim. And I would expect that the insurance companies will  
16 abide by the policy and review the claims, determine which  
17 are appropriate or not, and pay them out as they would do as  
18 if there was no bankruptcy proceeding. If that means that  
19 Mr. Bankman-Fried receives reimbursement, obviously, that  
20 would be great from our client's perspective. If it means  
21 others also receive reimbursement, I'm sure that is great  
22 from their perspective. If it means the debtors receive some  
23 type of reimbursement for some type of cost they incur, that  
24 is also possible.

25 The insurer will follow the policies, which is all

1 that we're asking. We're asking for the right to submit the  
2 claim and allow them to go forward, because the insurers have  
3 specifically told, and we understand why, as I'm sure does  
4 this Court, they have told us they will not look at our  
5 claims until stay relief is obtained.

6 THE COURT: Okay. Go ahead.

7 MR. SCHNITZER: Your Honor, you touched on the  
8 fact that there are potential other parties on. That was a  
9 point that the Committee made in their objection.

10 Once again, we don't believe that's the basis to  
11 deny the motion. If there are other parties that would like  
12 access to the policies, they merely need to comply with the  
13 policies and comply with any applicable Code provision. What  
14 I mean by that is, if they are individuals and they are not  
15 being, somehow, covered by an ordinary course professional, I  
16 suppose they would need to file a motion for relief from the  
17 stay, be before this Court, and if it's granted, then they  
18 can do, assuming this Court grants the motion that we filed,  
19 they would have a right to do it.

20 But our point, Your Honor, is nothing in the  
21 relief that we've sought prevents those other parties from  
22 doing so and Mr. Bankman-Fried shouldn't be penalized simply  
23 because he filed a motion and others have chosen not to.

24 And I will say it surprises us, Your Honor. We  
25 filed this motion a while ago. If there were these other

1 parties, I don't know understand why they haven't filed  
2 something, but that, you know, is their choice.

3 What you heard, Your Honor, in or what you read,  
4 Your Honor, I should say, in the debtors' and the Committee's  
5 papers is there are these other employees who the debtors  
6 have chosen to, it looks like, effectively indemnify and  
7 they're going to indemnify them by providing them counsel  
8 from Covington & Burling as an ordinary course professional.

9 And they've chosen to do that. They've chosen not  
10 to indemnify Mr. Bankman-Fried and to challenge his right to  
11 get reimbursement, but they've now told you that they're  
12 going to seek reimbursement under the policies for, at least,  
13 some of Covington & Burling's expenses.

14 Why do I point this out, Your Honor? Because it  
15 shows a reason why this instant motion should be granted. I  
16 don't think it would be appropriate to have one set of former  
17 employees getting legal counsel, effectively, for free from  
18 their perspective, whereas, another set of employees, or in  
19 this case, another set of one employee receiving -- having to  
20 pay for his own legal counsel and having no right to seek  
21 reimbursement.

22 Given this unequal treatment, Your Honor, we  
23 believe stay relief should be granted so that Mr. Bankman-  
24 Fried is certainly not worse off than these other employees  
25 who are getting this benefit of the legal fee.

1                   THE COURT: Well, can I just lift the stay for  
2 everybody and say, Go file your claim against the insurance  
3 policy.

4                   MR. SCHNITZER: Your Honor, I suppose you could.  
5 I would submit that I believe, generally speaking, a motion  
6 needs to be filed to seek relief. A motion was not filed for  
7 that. I believe it's up to those individuals or entities to  
8 file that relief.

9                   We did go to the trouble -- again, we went through  
10 the trouble because the debtors refused to stipulate to it.  
11 Had they told us in response to our request for a  
12 stipulation, Yes, Mr. Schnitzer, we think stay relief makes  
13 sense, how about we make it for all individual insurers, I  
14 would have said yes. I unquestionably would have said yes.  
15 I tell you today, I know I would have said yes. They didn't  
16 say that. They just said, No, go ahead and file your motion.  
17 So I did.

18                   If this somehow wants to be converted, and I would  
19 be more than happy for this to be one of the -- I believe  
20 they said there were 30 things, maybe, that they resolved  
21 consensually, I would be more than happy for this to be 31,  
22 if I'm counting right. It wasn't yet. If we can make it  
23 number 31 today, tell me where to sign, Your Honor. I would  
24 do so.

25                   THE COURT: Well, maybe I need to send everybody

1 out in the hallway for a little bit to see if you can resolve  
2 this motion.

3 But go ahead, finish your argument. Go ahead.

4 MR. SCHNITZER: Your Honor, bizarrely, the  
5 Committee suggested that Mr. Bankman-Fried will suffer -- the  
6 quote is, "will suffer no real prejudice if the stay is not  
7 lifted." It's hard to respond to that claim, because I don't  
8 even understand how it can be made, given that Mr. Bankman-  
9 Fried is a defendant in multiple civil actions, a defendant  
10 in various governmental actions, and he has to pay for all  
11 that legal representation out of his own pocket and have no  
12 access to insurance proceeds of a policy that's specifically  
13 applied to his current predicament.

14 The hardship is clear and multiple courts have  
15 recognized that. By way of example, Your Honor, in Downey  
16 Financial Corp., Judge Sontchi stated, quote:

17 "The insureds would suffer a very real and easily  
18 identifiable hardship if the stay is not lifted.  
19 Specifically, the insureds would have to pay 880,000 in  
20 defense costs, as well as any defense costs incurred  
21 subsequent to the filing of this motion, out of their own  
22 pockets."

23 Your Honor, if I could next move on to the  
24 objection filed by the Class Action Plaintiffs, the Onusz  
25 objection. As we stated in our reply, Your Honor, we submit

1 that that objection should be overruled because, (a), they  
2 have no standing to seek the funds under the D&O policies;  
3 (b), they wrongly placed their interests in potential  
4 recoveries in their adversary proceedings ahead of everybody  
5 else, including Mr. Bankman-Fried's rights under the D&O  
6 policy; and lastly, they falsely claim that Mr. Bankman-Fried  
7 has been found liable for, quote, "both civil and criminal  
8 unlawful conduct."

9                   The simple fact is that it would be patently  
10 unfair to allow the class actions to proceed against  
11 Mr. Bankman-Fried, but at the same time, deprive him of the  
12 right to access the proceeds to defend against these claims.  
13 This right to defense was recognized by the Southern District  
14 of New York in the MF Global case and also by this Bankruptcy  
15 Court in Allied Digital, both of which we cite in paragraph  
16 20 of our reply.

17                   Lastly, Your Honor, I want to touch upon the  
18 debtors' objection. I already mentioned the stay relief, so  
19 I won't repeat that again. I've already also mentioned the  
20 Covington & Burling issue. I think if there is another basis  
21 for accesses to the D&O proceeds, claims should be made.

22                   I was a little surprised that the debtors said  
23 that it would be both, unfair and inequitable for you to  
24 grant this relief. Again, as we said before, what we think  
25 is unfair and inequitable is that Mr. Bankman-Fried was

1 denied indemnification rights. He was then denied the  
2 debtors agreeing to a stipulation, and instead, the debtors  
3 have chosen to indemnify certain employees for whatever  
4 reason, and provide them with counsel free of charge, while  
5 at the same time, trying to stop Mr. Bankman-Fried from  
6 having any access to the D&O proceeds. So, if there's  
7 anything that would be unfair and inequitable, Your Honor, it  
8 would be to deny this motion, with respect to Mr. Bankman-  
9 Fried.

10 Your Honor, in sum, we respectfully request that  
11 this Court grant the motion and enter the proposed order that  
12 was included with the motion.

13 THE COURT: Okay. Thank you.

14 MR. SCHNITZER: Thank you, Your Honor.

17 MR. PASQUALE: Thank you, Your Honor. Ken  
18 Pasquale of Paul Hastings for the Official Committee of  
19 Unsecured Creditors.

20                   First, Your Honor, let me just very quickly  
21 address the point that the Committee shouldn't be heard  
22 today. The Committee is not a party to the policy; we're a  
23 party in interest to the case. There is no reason offered,  
24 either in contract or in law, as to why the Committee  
25 objection shouldn't be heard. And I know Your Honor, through

1 your questions, seemed to be recognizing that, but I did want  
2 to mention that.

3 I think, Your Honor, one of your questions was  
4 right on point, as well, and that is that Mr. Bankman-Fried  
5 misinterprets the policy. The policy here does not provide  
6 any priority to the Side A Claimants in the circumstances in  
7 which we stand here at the moment. The priority, if any,  
8 only arises under the terms of the policy if a claim is going  
9 to, at that point, exhaust the policy.

10 So, there is a sharing of the 10 million in  
11 aggregate proceeds between the Side A directors and officers  
12 and the debtors under Side B, C, and D of the policy. And  
13 because there is a sharing, Your Honor, as Judge Silverstein  
14 explained in the Boy Scouts case very recently:

15 "The debtor's interest in the proceeds requires  
16 protection from depletion and overrides the interest of the  
17 directors and officers." That's 642 B.R. 504, 573.

18 So, as we stand here today, it's actually the  
19 estates that have a priority to the policy -- to the proceeds  
20 of the policy, not the directors and officers. Given that,  
21 Your Honor, and I think, again, your question recognized  
22 this, there's no question, as a matter of law and contract,  
23 that the proceeds here are property of the estate and  
24 Mr. Bankman-Fried, then, has the burden of convincing this  
25 Court that stay relief is appropriate.

1                   No evidence has been presented by Mr. Bankman-  
2 Fried in that regard, and so let me hit those points in  
3 particular. The first, Your Honor, is that -- excuse me, I  
4 just lost my place.

5                   There is prejudice to the estates if the stay is  
6 lifted and Mr. Bankman-Fried is able to access the insurance  
7 proceeds for the very simple reason that the debtors will  
8 then have to pay the costs of defending various claims in  
9 various investigations that are pending now -- it's not  
10 hypothetical -- but that are pending at the moment, including  
11 the class action complaint that the Movant mentioned in  
12 argument and opposed the motion, as well. So, there's  
13 nothing speculative or hypothetical about; that exists today.  
14 And absent being able to access this particular policy of  
15 these particular debtors, the debtors would -- the assets of  
16 the estate would be diminished in that regard.

17                  Second, as to the prejudice that Mr. Bankman-Fried  
18 claims that he would sustain, again, no evidence has been  
19 presented. And in that regard, more particularly, the motion  
20 itself at paragraph 22 references that Mr. Bankman-Fried, by  
21 and through counsel, submitted notice letters to various  
22 other insurance carriers, including Relm here, but no  
23 evidence has been presented as to what other coverage  
24 Mr. Bankman-Fried has made claim to and may be receiving.

25                  In particular, we mention in our opposition, it's

1 the Committee's understanding that there is a \$20 million D&O  
2 policy of a different debtor, Paper Bird, that does not  
3 contained Side B, C, and D coverage and, thus, the issues  
4 that we're discussing today are not raised. But as I said,  
5 no evidence in the record in that regard at all.

6 Now, of course, the Court has great discretion and  
7 latitude in determining whether to lift the stay and in  
8 considering balancing the equities. The Court can consider  
9 in this regard, the charges and claims that are very  
10 significant against Mr. Bankman-Fried, his alleged complicity  
11 in the very actions that led to these bankruptcy cases, and  
12 the fact that three of his closest executives have pleaded  
13 guilty to serious crimes. Those are all relevant facts  
14 before the Court today and that's even while recognizing, of  
15 course, that Mr. Bankman-Fried has the right to contest those  
16 charges and claims. But the facts still remain of what the  
17 charges are as we look at the balance of the equities before  
18 Your Honor.

19 Finally, Your Honor, just -- and if the Court is  
20 inclined to grant the motion, we would request that the  
21 Movant be required to comply with Bankruptcy Rule 2016 and  
22 file applications with the Court so that we can -- the  
23 estates can monitor what proceeds from these policies are  
24 being used and in what manner.

25 So, unless the Court has any other questions,

1 those are the points that I wanted to raise.

2 THE COURT: Okay. Thank you. No questions.

3 MR. PASQUALE: Thank you, Your Honor.

4 MR. GLUECKSTEIN: Good afternoon, Your Honor. For  
5 the record, Brian Glueckstein, Sullivan & Cromwell, for the  
6 debtors.

7 Your Honor, we filed a response to the motion. As  
8 Your Honor knows, we share the concerns that Your Honor  
9 raised about the enforceability of the provision that  
10 prevents us from objecting. We, of course, understood the  
11 Committee was going to be objecting to this motion. We  
12 thought it prudent not to necessarily get into a fight with  
13 the insurance carriers at this stage.

14 But from our perspective, Your Honor, there are a  
15 number of points that Mr. Bankman-Fried has asserted that are  
16 inaccurate. Mr. Pasquale addressed a number of them,  
17 particularly how the policy works. And it is critical here,  
18 Your Honor, that the debtors do have coverage under this  
19 policy. We do believe it's an asset of the estate, and we do  
20 believe that the debtors today have claims under that policy  
21 with respect to Side B and Side C coverage. So, it's not a  
22 hypothetical as to whether there's a real interest here of  
23 the debtors, as the Court is considering whether or not to  
24 grant stay relief to Mr. Bankman-Fried.

25 The other point raised and articulated, again,

1 today with respect to the fact that we are, as the debtors,  
2 choosing certain current and former employees to indemnify  
3 and provide counsel to, to cooperate with investigations is,  
4 of course, true. And that's -- Mr. Bankman-Fried's papers  
5 make it sound like this was novel and new. That arrangement  
6 was disclosed back in February and in the declaration  
7 provided by the Covington firm in connection with their OCP  
8 retention in paragraph 5. It was disclosed very clearly that  
9 we had -- the debtors had requested that that firm provide  
10 services to represent, quote:

11                   "Current and former employees of the debtors in  
12 connection with ongoing investigations by the government, as  
13 well as related inquiries from counsel to the debtors and  
14 third parties."

15                   And, of course, Your Honor, that's providing a  
16 benefit to the estate. These are individuals that have  
17 information and they're sharing that information with the  
18 debtors in connection with the investigations highlighted and  
19 walked through by Mr. Dietderich earlier, and with the  
20 government.

21                   Mr. Bankman-Fried is not in that camp.  
22 Mr. Bankman-Fried, of course, is not cooperating with the  
23 debtors.

24                   There was a suggestion that we forced him to file  
25 this motion today. We did decline to enter into any sort of

1 stipulation as to stay relief. We have no obligation to do  
2 so.

3 Even if the provision in the policy is  
4 enforceable, despite the concerns Your Honor raises, it  
5 doesn't require us to cooperate with Mr. Bankman-Fried. It  
6 simply states, the language states that we would not impose  
7 stay relief, which we have not done. We do think that,  
8 certainly, the question, the debtors, to be clear, have no  
9 intention of cooperating with Mr. Bankman-Fried on this or  
10 other issues at this time.

11 With respect to the question of, you know, one  
12 former officer or director versus others accessing the  
13 policy, and we did raise this in our submission, Your Honor,  
14 we do think that if the Court is so inclined to access the  
15 policy, that Mr. Bankman-Fried should not get a leg up  
16 amongst -- among the other potentially insured parties here  
17 today.

18 And so, we certainly understand and agree with the  
19 points raised by the Committee, but to the extent stay relief  
20 is granted, it probably should be granted for all at this  
21 point. Thank you, Your Honor.

22 THE COURT: Thank you.

23 Anyone else wish to be heard before I go back to  
24 Mr. Schnitzer?

25 (No verbal response)

1                   THE COURT: Okay. Mr. Schnitzer?

2                   MR. SCHNITZER: Thank you, Your Honor. I'll be  
3 brief in responding.

4                   Your Honor, first, with respect to what the  
5 Committee said, they used the word "sharing," and this was a  
6 word that they also used in their motion, which I wanted to  
7 highlight. They want to give Mr. Bankman-Fried nothing and  
8 they want to give all the proceeds to somebody else, whether  
9 that be Covington, the debtors, or somebody else. I don't  
10 believe that's the definition of sharing. I don't believe  
11 that's the definition of anyone of sharing. So, I think if  
12 you truly want to do what the Committee is asking, which is  
13 have this policy shared, the relief sought should be granted.

14                  If it's to be in a stipulation where it's granted  
15 with respect to an individual insured and then people can  
16 file their claim, certainly. But sharing does not mean all  
17 the money goes to everybody except for Mr. Bankman-Fried;  
18 that's not sharing.

19                  Your Honor, I would also note this goes to their  
20 argument on terms of the prejudice to the estate. They're  
21 arguing, basically, that they'd be prejudiced because we  
22 would have access to money and they would have, the debtors  
23 or the other insureds, would have access to money at the same  
24 time. They're suggesting that, basically, the estate should  
25 get all the access to the money first and only if somehow

1 after that, there's leftover, then perhaps, someday, years in  
2 this future, you should grant this motion. That is not what  
3 the body of law says on this, Your Honor, and I don't believe  
4 that's correct.

5 They also made a point with respect to  
6 indemnification and I would just say, Your Honor, any payment  
7 of defense costs, and this is from the Allied Digital case,  
8 quote:

9 "Any payment of defense costs will remove any  
10 indemnification claims any individual defendants would have  
11 against Allied Digital."

12 That works for Mr. Bankman-Fried, as well.

13 Mr. Bankman-Fried does have a potential indemnification claim  
14 against the debtors. If he receives reimbursement from the  
15 insurance proceeds, that satisfies the claim, same as,  
16 perhaps, any of these other individual insureds have.

17 Your Honor, the debtors, again, made this point  
18 about these other parties and I just wanted to state  
19 something clearly. They stated in their papers that we  
20 inappropriately sought the relief only with respect to the  
21 payment of insurance proceeds to Mr. Bankman-Fried.

22 Again, Your Honor, from my perspective as  
23 Mr. Bankman-Fried's lawyer, that's all I could do, Your  
24 Honor. I don't believe it's appropriate. I believe it  
25 would, in fact, be unethical for me to file a motion for

1 relief from the stay on behalf of people who I don't know, I  
2 can't even identify their names, and who, actually, I  
3 believe, are being represent by another law firm, Your Honor.  
4 I believe I would be subject to, we'll say, lots of problems,  
5 if I did that. So, I think the suggestion that this was  
6 inappropriate, particularly when any party could have filed a  
7 motion at any time, including a few minutes before this  
8 hearing, Your Honor, that that's not correct.

9                   Lastly, Your Honor, the Committee suggests that  
10 this should be subject to some sort of fee app. In support  
11 of that, they cite to a 2005 case out of Ohio and a 2008 case  
12 from Florida. Notably, they failed to cite to any case from  
13 Delaware.

14                   We have seen no case in Delaware that does that.  
15 I'm not suggesting that means they don't exist. As you know,  
16 PACER is not the easiest thing to search, so it's possible.

17                   I don't believe it's appropriate. I don't believe  
18 it's appropriate, particularly in this case. Mr. Bankman-  
19 Fried is a, as you know, is a defendant in multiple class  
20 actions and is a target of multiple government  
21 investigations.

22                   If he had to file a fee app setting forth what his  
23 lawyers are doing for him, you'd either have one of two  
24 situations. We'd either have to reveal his strategy to the  
25 people who are trying to proceed against him or we would have

1 to essentially redact almost the entire invoice, such that  
2 what you would have before you would look like -- it would  
3 look like a bunch of black lines is what it would look like.

4                   So, Your Honor, I don't believe it's appropriate.  
5 I also believe it shows, really, the true intent here, and  
6 that's just to frustrate Mr. Bankman-Fried's ability to  
7 defend himself, not only trying to deprive him of the right  
8 to proceeds, but then trying to condition it, Well, if you  
9 can have a right to proceeds, you should have to file a fee  
10 app, something that they didn't suggest with respect to any  
11 other individual, something that doesn't govern Covington &  
12 Burling right now, as long as their fees are under \$200,000.  
13 So, it seems like this is, one again, special treatment for  
14 Mr. Bankman-Fried. While, in general, I would say everyone  
15 likes to feel special, this is not one of those  
16 circumstances, here, where he should be treated differently.

17                   I would say this, Your Honor, if you do believe  
18 some type of notice is appropriate so that this Court is  
19 aware and so that, perhaps, other parties are aware, you  
20 could do what was done in one of the cases cited by the  
21 Committee, and that's the case, In re Beach First National  
22 Bancshares. It's 451 B.R. 406. In that case, what the Court  
23 said is the insurers should review fees paid under the  
24 defense cost provisions of the policy to ensure that the  
25 costs actually relate only to the defense of the directors

1 and officers and that the fees and expenses were actually  
2 incurred and are necessary and reasonable, and, at least five  
3 business days prior to disbursing any funds, they should  
4 notify -- in that case, it was a trustee -- notify the  
5 trustee of the amount of defense costs paid.

6 So, basically, what the Court did in that case is  
7 said -- told the insurers, Do your job. Do what your policy  
8 requires you to do and what you were presumably doing before  
9 the bankruptcy, and right before, as in five business days,  
10 you're going to disburse funds, notify the bankruptcy estate  
11 that you're going to (indiscernible) so that people kind of  
12 have a running total of what's being done.

13 So, if you believe some type of notice is  
14 appropriate so that people kind of know the balance, that, I  
15 would suggest is a reasonable solution, which would not get  
16 into Mr. Bankman-Fried or anyone else's attorney-client work  
17 product and just, you know, general defense strategy issues.

18 Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 All right. I'm going to take a recess here. I  
21 don't know if there's any willingness or desire for the  
22 parties to talk to one another about a potential resolution  
23 here. I mean, the options are I open this up for -- I lift  
24 the stay for everybody so people can assert their claim as it  
25 comes in and the insurance company will decide who gets paid

1 and who doesn't. Another option would be I don't lift the  
2 stay, but at the end of the day, at some point in the future,  
3 parties come forward and say, Well, this is the costs that we  
4 incurred at this period of time and so we want reimbursement  
5 under the policy or something to that effect. And the third  
6 option is I just deny the motion.

7 So, I don't know if -- I'm going to take a recess.  
8 So you can talk if you want to. I don't know if I'm going to  
9 come back and give you a ruling right now -- I may. I may  
10 not. But let's take a recess for -- let's take a recess  
11 until 2:20 and then I'll come back on the record at that  
12 time.

13 Yes, sir?

14 MR. SABIN: Your Honor, I rise only to correct  
15 something on the record. Jeff Sabin from Venable  
16 representing OKCoin and their affiliate OKEx.

17 And I am happy for this Court's approval and for  
18 all the cooperation that we got from debtors' counsel that  
19 led to the soon turnover and transfer to these estates of  
20 more than \$160 million, but the information that was  
21 exchanged was all pursuant to a confidentiality. The motion  
22 itself and your order doesn't designate which of the two  
23 exchanges, otherwise, is turning back what money.

24 The accounts themselves are identified in the  
25 motion. The order approves it. And so, I don't want anyone

1 in the press or listening or anything else to say that it was  
2 OKCoin, as I think, inadvertently, Mr. Dietderich is  
3 referring to, that is returning this particular account that  
4 has roughly 150 million. I just wanted to correct the  
5 record.

6 THE COURT: Okay. Thank you.

7 All right. Let's take a recess and we'll come  
8 back. Thank you.

9 (Recess taken at 2:05 p.m.)

10 (Proceedings resumed at 2:29 p.m.)

11 THE COURT: The Court?

12 MR. GLUECKSTEIN: Your Honor, I think we've all  
13 agreed that, or at least the debtors and the Committee have,  
14 and we've advised Mr. Bankman-Fried's counsel that we would  
15 just like a ruling from the Court.

16 THE COURT: Okay. Well, in order to lift the  
17 stay, the burden is on the Movant to prove cause and,  
18 frankly, I have zero evidence to establish cause here.  
19 Mr. Bankman-Fried did not put on any evidence whatsoever as  
20 to what, and the balancing of the equities here, what harm is  
21 going to occur to him. I don't know what other insurance  
22 policies he has access to. I don't know what other assets he  
23 has access to privately that would allow him to cover these  
24 costs and then recover them later under this policy. I have  
25 nothing to show that there was any cause here.

1           It's also the burden on Mr. Bankman-Fried to prove  
2 that there would be no harm to the bankruptcy estate and that  
3 has not been done either.

4           And, finally, that he had the probability of  
5 success on the merits and I have absolutely no evidence  
6 whatsoever on that either.

7           So, at this point, I have no choice, but to deny  
8 the motion for lack of evidence. I'll do so without  
9 prejudice. If Mr. Bankman-Fried wants to come back and put  
10 on evidentiary hearing that will establish the elements  
11 necessary for me to lift the automatic stay, he's free to do  
12 so, but we'll deal with that another day.

13           So, for now, the motion is denied. The parties  
14 should submit a, or Mr. Bankman-Fried's counsel should submit  
15 a form of order denying the motion without prejudice, and  
16 we'll go from there.

17           Anything else before we adjourn for the day?

18           MR. GLUECKSTEIN: Thank you, Your Honor. Again,  
19 Brian Glueckstein for the debtors.

20           The only other thing on the agenda today, Your  
21 Honor, was Item 14, which was the status conference in the  
22 Emergent case. The parties did submit yesterday afternoon an  
23 agreed-upon stipulation --

24           THE COURT: I did see it, yes.

25           MR. GLUECKSTEIN: -- that the parties worked

1 through since the hearing in March to address the issues that  
2 Your Honor raised at that hearing. That is now agreed and  
3 executed, as Your Honor saw.

4 We will be submitting that, certainly in the FTX  
5 case and in the Emergent case, and BlockFi will be doing so  
6 in New Jersey in its case to get that formally approved by  
7 Your Honor as expeditiously as possible so that those stays  
8 can go into effect. But --

9 THE COURT: I did see -- I thought -- correct me  
10 if I'm wrong, but I thought I had read that it's contingent  
11 on both courts approving it?

12 MR. GLUECKSTEIN: It is, Your Honor. To be  
13 effective, both courts --

14 THE COURT: Then I probably need to call Judge  
15 Kaplan and find out whether he's going to approve it before.  
16 We're going to have to do it simultaneously, I guess?

17 MR. GLUECKSTEIN: I know that -- I'll leave it to  
18 BlockFi's counsel, but yeah, I mean, I think from our point  
19 of view, we don't, and I think BlockFi is in agreement, that  
20 there isn't any anticipated sort of issues there.

21 THE COURT: I wouldn't think so.

22 MR. GLUECKSTEIN: But, yeah, we will submit an  
23 order to Your Honor with the stipulation and ask that that be  
24 entered.

25 Other than that, I don't -- unless there's any

1 other matters in the Emergent case that Your Honor wanted to  
2 address, I don't think there's anything from the parties  
3 today.

4 THE COURT: Okay. Thank you.

5 Anything? Did you want to say something? I  
6 thought I saw you stand up.

7 MR. ABBOTT: Yeah, I did, Your Honor. Derek  
8 Abbott of Morris Nichols, here for BlockFi.

9 Your Honor, we're going to submit it  
10 expeditiously. I think all parties would like to see it  
11 approved by both courts as quickly as possible, so we'll do  
12 whatever we can to make that happen, Your Honor.

13 THE COURT: Well, just submit it under COC. I can  
14 enter it right away under COC. I have no problem with it. I  
15 reviewed it. I think it's appropriate and I would enter the  
16 order. So, once it's submitted to me under COC, I'll do  
17 that.

18 MR. ABBOTT: Will do, Your Honor. Thank you very  
19 much.

20 THE COURT: Okay. All right.

21 Thank you all very much. We are adjourned.

22 COUNSEL: Thank you, Your Honor.

23 (Proceedings concluded at 2:33 p.m.)

24

25

## CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

April 12, 2023

William J. Garling, CET-543

Certified Court Transcriptionist

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